

REMARKS

The Patent and Trademark Office action dated August 11, 2005, has been carefully considered. Applicant submits this amendment after final in compliance with 37 C.F.R. § 1.116 by placing the application in condition for allowance. Claims 2, 5, 6 and 8 are cancelled without prejudice. Claims 6 and 8, which were previously withdrawn, may be the subject of a divisional application. Claims 1, 3, 4, 7, 9 and 10 remain with claims 1 and 7 being amended to incorporate the limitations of dependent claims 2 and 8 respectively. Since dependent claims 2 and 8 were objected to and considered allowable if written in independent form, claims 1 and 7 as amended are considered allowable. Claims 3, 4, 9 and 10, depend on claims 1 and 7, respectively, and are considered allowable.

Applicant takes issue with certain of the Examiner's arguments, namely that "raised rib sections 26 (of Tash '356) are provided and a textured set of bands 28 is provided in an alternate fashion between the rib sections." (Detailed Action, p. 3. Elements 28 and 30 of Tash '356 are a "grid pattern comprising a plurality of parallel, external reinforcing ribs 28, running longitudinally and interconnecting spaced, paralleled external reinforcing ribs 30" (Tash '356, cd. 3, lns. 15-17).

Similarly, in Vanderlans '439, element 20 defined by the examiner as "a textured band 20, is provided in an alternating fashion between the rib sections 11." (Detailed Action p. 5) Element 20 of Vanderlans '439 is incorrectly defined as "pipe wall 20" (Vanderlans '439, col. 3, ln. 40). The more appropriate item 21 '439 is variously defined as "mid-section 21," (col. 2, ln. 58) "a series of circular dimples 21" (col. 2, lns. 58 - 59); "dimple portion 21" (col. 2, ln. 60) and "dimpled portions 21" (col. 3, ln. 5)

The referenced patents show and describe elements different than the

Examiner's characterizations and distinguishable from applicants' defined structure that was aptly defined as textured bands in conformity with a reasonable dictionary definition of "textured." Only in the very broadest sense can the single center portions of Tash '356 and Vanderlans '439 be considered equivalent to applicant's alternating textured bands.

Finally, the "motivation to combine" argument of the Examiner (Detailed Action p. 6) sounds dangerously like the "obvious to try" argument hopefully laid to rest. Nowhere in the statutory patent law is "motivation" a criterion. It is a judicial fabrication. Since a statutory invention must be novel, useful and non-obvious, there is always a motivation to make the invention. It is bad enough that Examiners are using "motivation" as a catchall to justify combining references to do what the applicant has done; i.e., the combination allegedly accomplishes the usefulness of applicant's invention. But to extend "motivation to combine" to any justification without reference to the applicant's motivation sends us down a slippery speculative slope.

Applicants and Examiners must approach patent prosecution pragmatically. There were no suggestions in the body of the references suggesting that the features could be combined. The fact that from hindsight one can speculate on a motivation to combine that is not even applicant's motivation takes us into a whole new realm of abstraction.

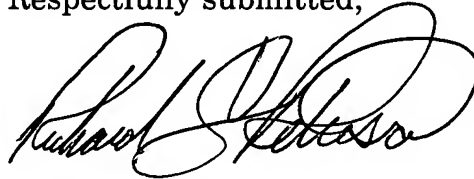
It is best that we stick to what is taught by the prior art and determine in a reasonable manner whether it is obvious to one of ordinary skill in the art to make the combination of components because of various factors, particularly whether there was any suggestion in one or more of the references to make the combination. For example, while size is not specified to be counted as a distinguishing feature, it matters when determining whether the reference is considered in the first place

and whether there is a natural inclination to make the combination.

Although the foregoing is moot with respect to the reply and amendment made, it is necessary to clarify the position of the applicant and concede only that in its broadest sense as "not smooth" texture could, for example, apply to the dimpled surface of Vanderlans.

All claims being allowable, applicant respectfully requests that the application be passed to issuance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Esty Peterson", written in a cursive style.

Dated: September 29, 2005

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